

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DISH NETWORK L.L.C. F/K/A ECHOSTAR
STATELLITE L.L.C.,

Plaintiff,

- against -

ESPN AND ESPN CLASSIC, INC.,

Defendants.

09 Civ. 6875 (JGK)

ORDER

JOHN G. KOELTL, District Judge:

In response to the motion by Dish, the pre-trial order is amended to allow Dish to add Judith Meyka as an expert witness whom it may call. Dish has shown that the error in excluding the witness was inadvertent and that ESPN will not be prejudiced because ESPN has already deposed the witness who has also provided an expert report. ESPN may designate a counter-expert, if it has not already done so. (The parties advised at the last conference that ESPN does have a counter-expert.) There is a sufficient showing to amend the Joint Pre-Trial Order. Accordingly, Dish's Motion For Leave to Amend the Joint Pre-Trial Order is **granted**. **The Clerk is instructed to close Docket No. 106.**

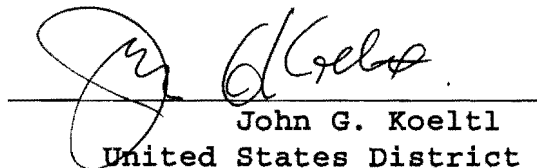
ESPN may file a motion in limine to exclude all or part of the testimony of Ms Meyka. On its face, the report raises concerns about whether the testimony would be helpful to the

jury. While Dish represented at the last conference that Ms. Meyka would testify about industry customs and practices which might be relevant to the issues that the jury must decide, the report consists largely of Ms. Meyka setting out provisions of the Dish/ESPN Agreement, and then opining that, "based on [her] years of experience and custom and practice in the industry," another provision in a third party agreement violated that provision, or the failure to offer such a provision violated that provision. It is difficult to find the industry customs and practices to which Ms. Meyka may be referring. However, the Court need not resolve that issue at this time. It is appropriately the subject of a motion in limine, which ESPN indicated in its papers that it had already begun to draft.

ESPN's motion in limine to exclude all or part of the testimony of Ms. Meyka is due **January 24, 2013**. The response is due **January 30, 2013**.

SO ORDERED.

Dated: New York, New York
January 21, 2013


John G. Koeltl
United States District Judge